

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DIVISION Lufkin

DATE April 26, 2005

DISTRICT JUDGE RON CLARK

TIME 10:00 a.m. - 4:05 pm

Burns, Morris & Stewart, Inc.

REPORTER Chris Bickham

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C/DEPUTY V. J. Wisenbaker

CIVIL NO. 9:04-cv-23

PLAINTIFF

VS.

Endura

DEFENDANT

ATTORNEYS FOR PLAINTIFF

Jeff Standley, Mike Speed, Claude Welch

ATTORNEYS FOR DEFENDANT

Jack Hicks, Bill Capp, D. J. Mason,

Frank Calvert

FILED
4:05 p.m. April 26 2005
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT
By Beverly A. Baugh DEPUTY

THIS DAY CAME THE PARTIES BY THEIR ATTORNEYS AND THE FOLLOWING PROCEEDINGS
WERE HAD: See Attached

DAVID J. MALAND

V. J. Wisenbaker
DEPUTY CLERK

Total Time: Hrs. 4 Mins. 26

4/25/05, 10:10 a.m.

9:04-cv-23

The court called the case for the purpose of conducting a *Markman* hearing. The court recognized the attorneys for the plaintiff and defendant. Parties were reminded that the court had set a two hour time limit per side for presentation of evidence.

10:15 Opening statement for the plaintiff was made by plaintiff's attorney, Jeff Standley.

Plaintiff presentation of the evidence commenced. Mr. Bob Weiglein called and sworn as plaintiff's 1st witness. Defendant's Motion in Limine [Doc. #45] was granted in part. Weiglein was limited to discuss what was previously disclosed in his report and deposition. Direct exam was completed.

11:17 Defendant's attorney, Bill Capp, commenced cross examination.

11:20 Mr. Rick Hagel was called as plaintiff's 2nd witness. Witness sworn and direct examination was conducted by Mr. Mike Speed.

11:40 Cross by defendant's attorney Capp.

12:00 Court in recess until 1:15.

1:17 p.m. Court reopened. Mr. Rick Hagel returned to the stand and redirect exam was commenced.

1:28 Re-cross of Rick Hagel by defendant's attorney.

1:30 Witness Rick Hagel excused. Plaintiff's presentation of evidence completed.

1:31 Defendant's attorney, Jack Hicks, gave the opening statement for the defense.

2:05 Defendant called Mr. Kevin MacDonald as 1st witness. Direct exam of MacDonald was conducted by D. J. Mason.

2:33 Direct examination was completed and there was no cross by the plaintiff.

Court in recess until 2:45.

2:45 Court back in session. No other witnesses called by the defense. Defendant submitted Charlie Headrick's report and made him available for cross. No cross.

The court held discussions with the attorneys concerning the admission of exhibits.

Defendant's exhibits 1-10 were admitted; 20, 21, and 22 were admitted for purposes of the *Markman* hearing only.

Plaintiff's exhibits 1-10 were admitted for purposes of the *Markman* hearing only..

The court questioned the attorneys about the differences in each side's interpretation of certain terms used in the patents.

3:37 Closing statement by defendant's attorney Capp.

4:00 Closing statement by plt's attorney Standley.

The court instructed the attorneys to submit photographs of the exhibits.

4:05 Court adjourned.

Note: Plaintiff had 23 minutes and defendant had 41 minutes remaining of the two hours allotted to each side for presentation of evidence.